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To: U.S. Department of Justice

Attn.: Director, Office of Information Policy (OIP)

From: Brian David Hill

FOIA Appeal Case No.

Fax ID: 276-790-3505

DOJ-AP-2017-002520

**--Letter to Office of Information Policy citing Legal Basis to Support
FOIA Request and Appeal--**

*******Freedom of Information Act Appeal*******

FOIA Appeal # DOJ-AP-2017-002520

**APPEAL and Response to FOIA Request to Executive Office for United
States Attorneys – Re: FOIA-2016-03570**

Friday, March 24, 2017 - 12:29 AM

ATTN: Director

Office of Information Policy (OIP)

United States Department of Justice

FOIA Appeal Case No. DOJ-AP-2017-002520

Phone: (202) 514- 3642 (FOIA)

Fax: (202) 514-1009

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ATTN: OGIS Mediation Case No. 201701674

Office of Government Information Services

National Archives

**Phone: (202) 741-5770 /// Fax: (202) 741-
5769**

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CC: Office of the Inspector General

U.S. Department of Justice

Phone: (202) 514-3435

Faxed to: (202) 514-4001

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CC: Office of Professional Responsibility

U.S. Department of Justice

Phone: (202) 514-3365

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--Letter to Office of Information Policy citing Legal Basis to Support FOIA
Request and Appeal--

*****Freedom of Information Act Appeal*****

FOIA Appeal # DOJ-AP-2017-002520

APPEAL and Response to FOIA Request to Executive Office for

United States Attorneys – Re: FOIA-2016-03570

Friday, March 24, 2017 - 12:29 AM

<u>ATTN: Director</u> Office of Information Policy (OIP) United States Department of Justice 1425 New York Avenue, NW, Suite 11050 Washington, DC 20530-0001 Phone: (202) 514- 3642 (FOIA) Fax: (202) 514-1009	<u>FOIA Appeal Case No. DOJ-AP-2017-002520 // OGIS Mediation Case No. 201701674</u> Office of Government Information Services National Archives 8601 Adelphi Road-OGIS College Park, Maryland 20740-6001 Phone: (202) 741-5770 /// Fax: (202) 741-5769
<u>CC: Office of the Inspector General</u> U.S. Department of Justice 950 Pennsylvania Avenue, N.W., Suite 4706	Washington, D.C. 20530-0001 Phone: (202) 514-3435 Faxed to: (202) 514-4001
<u>CC: Office of Professional Responsibility</u> U.S. Department of Justice 950 Pennsylvania Avenue, N.W., Suite 3529	Washington, DC 20530-0001 Phone: (202) 514-3365 Faxed to: (202) 514-5050

Dear Office of Information Policy (OIP), Re: Case No DOJ-AP-2017-002520,

I submit my Legal Basis of both a Statutory (FOIA Law) and Constitutional nature, that support my original FOIA Request and my claims under FOIA Appeal.

I sustain the right, due to asserting ineffective assistance of Counsel to the U.S. Attorney Office in Greensboro, NC, as well as the EOUSA, under Declaration, in my original FOIA Request, as to the right to obtain and request my discovery evidence that was used against me in my criminal case. I explained that I wish to prove my Actual Innocence, that I cannot prove my Actual Innocence without access to the original discovery evidence, pursuant to my right under Writ of Habeas Corpus. As I am still under a Federal sentence, in the custody of the U.S. Probation Office, which has taken away my rights to come and go as I please, sustain that I still have the right to file a Writ of Habeas Corpus Petition which was also superseded by the Statutory Section 2255 Motion which I had not exhausted. I can freely file this 2255 Motion upon any evidence gathered to help prove "Actual Innocence" by showing FACTS of Actual Innocence. I cannot make a credible, factual, and competent claim of Actual Innocence without access to a copy of all criminal evidence that was originally used to indict me in Federal Court.

That includes my confession Audio recording that is retained by Mayodan Police Department, which is refusing to give me access to such confession to prove a competent claim that my confession was false as a result of coercion and/or threats.

If I file a 2255 with no evidence of Actual Innocence, I risk getting a higher prison sentence via modification of my sentence that would legally be authorized once I file the 2255 Motion giving the Federal Judge, a right to modify my sentence which can include changing from "time served" to a higher sentence of incarceration.

Normally on Television shows such as Ryan Ferguson's "Unlocking The Truth" TV series, he needed access to the inmate's discovery material packet of criminal evidence, before he could help hire experts and any kind of legal assistance to help prove each wrongfully convicted inmate's innocence. My public defender sought to enforce his own discovery rules, without any copy of an agreement or contract or document, enforcing secret discovery rules that I was not permitted a copy of, which would even bar me from disclosing the discovery materials from the U.S. Attorney Office with any forensic expert. Barring me from being allowed to disclose any of the discovery evidence with forensic experts defeats the purpose of allowing me to prove my Actual Innocence. Proving Actual Innocence would legally vacate my punishment, vacate my sentence entirely as well as overturning my conviction, vacate my felony, vacate my Sex Offender registration requirement, and allow me to live the life of a law abiding citizen as I always was a law abiding citizen. What I had experienced throughout my criminal case, pretrial, and right at the Jury Trial period date of June 10, 2014, I was denied my entire Due Process rights, the same day that I was forced into taking the guilty plea or I would have faced up to twenty years in Federal prison hard-time without a legal defense, when I clearly could have had a legal defense such as the Affirmative Defense of Frame Up, and all I am required to do is show at least one reasonable doubt to expect a Jury verdict of "Not Guilty," a hung Jury, or even possibly a mistrial depending on how the trial could have possibly gone with a effective lawyer instead of a ineffective lawyer like Eric David Placke.

Read my Docket entry of criminal case 1:13-cr-435-1, U.S. District Court for the Middle District of North Carolina, United States of America vs. Brian David Hill. It clearly shows that I have "no trial Attorney" at this time since John Scott Coalter (my last documented Trial Defense Attorney on Court record) had withdrawn/terminated himself and his services as my Counsel after getting paid by a CJA Voucher. He even notified me that he cannot become my Legal Counsel again due to "conflict of interest" since I have to show that he and Eric David Placke were both ineffective as Assistance of Counsel. Of course both of them were ineffective as both ignored my false confession statements and ignored the fact that there was a claim by SBI Agent Rodney V. White that child porn downloaded "between the dates July 20, 2012, and July 28, 2013." Seized property was seized around August 28, 2012. Court appointed Attorney Renorda Pryor may still be considered my legal Counsel in my case however only for the Probation issues as she was appointed over

the matter of the U.S. Probation Office Supervised Release revocation hearing which the final revocation hearing was June 30, 2015. I was given six months Home Detention and such condition was successfully completed, therefore Renorda Pryor no longer holds an interest in my criminal case, and she cannot legally hold my discovery evidence, as she was not listed as my Trial lawyer. So that means that at this point, until I file a Rule 33 Motion for a New Trial by the deadline cutoff period of June 10, 2017, or a Section 2255 Motion on the ground of Actual Innocence, I am acting Pro Se and am the only one that can actually get access to my discovery packet, since I do not have any Attorney whom has filed a "Notice of Appearance", which grants me a Attorney to do post-conviction work to help me prove my Actual Innocence. Since I am acting Pro Se in my criminal case, as well as in my FOIA Request and FOIA Appeal, I am entitled to the entire discovery packet of evidence upon a written request (which I had done) and may be allowed to hold the discovery evidence until a new Attorney has been appointed to me to support my post-conviction work of proving my Actual Innocence before attempting the Writ of Habeas Corpus to prove my Actual Innocence without risking a higher prison sentence (modification of sentence) just to simply be allowed to see if I can gather enough evidence to prove my Innocence. That way I waste no judicial resources, and the Court will only have to rule over the evidence and facts of my Innocence, instead of waiting for weeks to months in a discovery game between me and the U.S. Attorney which puts me under heavy stress and anxiety, when I could have access to the discovery evidence and work on proving my Innocence before I file my 2255 Motion or request a New Trial.

Therefore, under the 14th Amendment of the U.S. Constitution (Bill of Rights) concerning Due Process clause, I cite in my FOIA Appeal and for my FOIA Request, that I am entitled to discovery evidence that was originally used to get me a Grand Jury Indictment when the Grand Jury ruled that:

Citing Case 1:13-cr-00435-WO, Document #1, Filed 11/25/13 Pages 1 to 2

"On or about August 29, 2012, in the County of Rockingham, in the Middle District of North Carolina, BRIAN DAVID HILL did knowingly possess materials which contained child pornography, as defined in Title 18, United States Code, Section 2256(8) (A), said child pornography containing an image that involved a prepubescent minor and a minor who had not yet attained 12 years of age, and which materials had been shipped and transported using any means and facility of interstate and foreign commerce and in and affecting interstate and foreign commerce by any means, including by computer, and that was produced using materials that had been shipped and transported in and affecting interstate and foreign commerce, including by computer; in violation of Title 18, United States Code, Section 2252A(a)(5)(B) and (b)(2)."

After I was indicted, I had two choices to make, either protect my Constitutional

rights by reviewing/inspecting over the evidence, as well as gathering evidence, to prove to a Jury that I am Actually Innocent or at least raise one reasonable doubt to give the Jury a reasonable doubt to which they must find me "Not Guilty" (however I prefer to prove Actual Innocence as it is stronger and would be less risky at Jury Trial). The other option was to let the U.S. Attorney present his/her evidence with no criminal defense, and of course the high risk of that would guarantee the same result as with the Grand Jury indictment, that I will be found GUILTY and be sentenced to a high prison sentence for not accepting responsibility.

I was never given the option of proving my Innocence, John Scott Coalter and Eric David Placke both wanted to do nothing to prove my Innocence at all and find no reasonable doubts either (even though reasonable doubts had existed within the evidence records of the U.S. Attorney). My only option was to waive my rights by falsely pleading guilty which is wrong. However the plea agreement had only extended to me waiving my right to a trial, but upon discovery of New Evidence or by showing a basis of evidence and cause of ineffective Assistance of Counsel (aka trial Counsel), I have asserted my Constitutional right to take my criminal case back to Trial or waive trial completely upon a **FACTUAL CLAIM OF INNOCENCE** aka the Actual Innocence basis. Upon proving Actual Innocence, the Judge can order me to have a Judgment of Acquittal meaning that I will not have to face a Jury since the evidence would clearly demonstrate actual Innocence and such Jury Trial would waste judicial resources and waste the time and resources of the Federal Court. To save Judicial resources, if I prove enough evidence and facts to support the fact that no reasonable Jury would find me guilty based upon a fact-finder, that no Jury would vote me guilty due to the evidence concerning factual Innocence. Factual Innocence is Actual Innocence, referring to the same meaning.

My rights under Brady v. Maryland and all of my Constitutional discovery rights were violated/deprived, as well as my rights that I am entitled to under Strickland v. Washington, which is why my FOIA Request is my only means of discovery in my right to proving my Actual Innocence:

Citing Brady v. Maryland, 373 U.S. 83 (1963):

"Brady v. Maryland was a 1963 U.S. Supreme Court case. In it the Court held that it's a violation of due process for the prosecution to suppress evidence that the defense has requested and that is:

- material either to guilt or punishment and*
- favorable to the accused."*

"In that case, Brady and Boblit had been convicted of first degree murder and sentenced to death. At his trial, Brady testified that he participated in the crime, but that Boblit actually killed the victim. Before trial his lawyer had requested that the prosecution give access to Boblit's out-of-court statements. The defense saw several of those statements, but the prosecution withheld one, in which Boblit admitted carrying out the killing. The Court held that the prosecution's action—even though it had to do with punishment rather than guilt—denied Brady the due process of law that's guaranteed by the 14th Amendment. (Brady v.

Maryland, 373 U.S. 83 (1963).)"

Because I had ineffective Counsel, I had no discovery rights that I was entitled to under Brady within the case law of the United States Supreme Court, and even my own ineffective Defense lawyer deleted evidence and refused to allow me to get any expert witnesses involved in reviewing over my discovery evidence which would help to prove my Innocence in favor of the accused which is myself.

Since the U.S. Attorney has decided to cover up or conceal records because I had finally asserted my Due Process rights that I was never given by my ineffective Counsel that only colluded with the Prosecution aka the Government in my criminal case, to give me the best guilty plea deal while refusing to review holes in the U.S. Attorney's own evidence as apart of discovery, refused to let me see the entire discovery while lying to my family in an email (Office of Information Policy has that particular email in one of my received faxes, "Bit of Evidence that Assistant Federal Public Defender LIED to me, LIED to my family, LIED to one or more Federal Judges, showing evidence that confidence in my Attorney was compromised causing false guilty plea to the Honorable U.S. President Donald J. Trump and The White House staff/aides") that he would allow me to review all of the discovery evidence in his presence. He did not even allow me access to all of the discovery evidence and the Maximum Security Jail of Forsyth County Detention Center gave Eric David Placke the advantage at making sure that I couldn't just read every page of the discovery packet. This is a combination of a Brady Violation and ineffective Assistance of Counsel which is a Strickland v. Washington Violation.

Brady Violations

If the defense learns about a Brady violation after the defendant has been convicted, the defendant is typically owed a new trial if the nondisclosure was material. According to the U.S. Supreme Court, the missing evidence is to be considered as a whole rather than piece by piece, but it's material only if there's a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (United States v. Bagley, 473 U.S. 667 (1985); Kyles v. Whitley, 514 U.S. 419 (1995).)

Courts have tended to be quicker to find Brady violations where the defense has specifically requested an item and the prosecution has misled the defense about its existence. Courts will find Brady violations in other circumstances too, as when the defense has made a very general request for exculpatory material or hasn't made any request. But they might be slower to hold that the omission was material in these kinds of situations.

Brady and the cases related to it provide what's essentially a baseline for what prosecutors have to turn over to the defense. The federal system and many states have statutes that entitle the defense to more material. (Sometimes the defense must request this material.)

My FOIA Request had specifically requested the material, and the U.S. Attorney did provide me a portion of the discovery materials with missing pages, missing confession Audio CD, missing SBI report, missing Search Warrant, and the missing PSI

report where the Government admitted a fact in contradiction to the Search Warrant Affidavit claim by Detective Robert Bridge.

Federal and state statutes often require disclosure of items like the following:

- statements by the defendant and any co-defendants*
- documents and tangible objects the prosecution will use at trial*
- a list of the witnesses the prosecution plans to have testify at trial (and perhaps prior statements by those witnesses)*
- copies of reports of scientific tests and medical and physical examinations that have been prepared for the prosecution*

What happens when evidence that should be disclosed is lost or destroyed?

Well the fact that the very evidence that was used against me in the Grand Jury proceeding against me, then when I find holes in the Government's case which makes it weak and unable to prove me guilty beyond reasonable doubt, then the U.S. Attorney decides to cover up or conceal the very evidence that would prove that the Government's case was weak, is a huge Constitutional defect that effects the validity of the very evidence that was used against me, and it draws my conviction into jeopardy. Then of course our Nation's founding fathers would also agree that a conviction based upon entirely questionable evidence should not stand, that any reasonable Juror should find the Defendant, Not Guilty.

It is a FACT that my Confession aka the Confession Audio CD should be disclosed via FOIA since it does not show any privacy issues regarding third parties. When the confession was made, it was only me that answered questions of a personal nature, whether I could give a false confession or true confession, the privacy rights of third parties is not violated just simply by me getting access to, or a copy to the Audio CD which contains my confession to which I am claiming that very confession to being false, a fact of actual Innocence.

It will be slightly more difficult to argue as to the SBI case File, however I already know the name of the SBI Agent that had written the SBI Case File. His name is within the N.C. State Bureau of Investigation (SBI) records. Anybody in the general public can make a phone call to the Greensboro regional SBI office and ask about Rodney V. White as that name is of public record in regards to anybody who wishes to contact him and make a tip to him as a Special Agent of the SBI. His report is of discovery nature, and getting a copy of his forensic report would help me to demonstrate actual innocence to the extent of showing signs of "Frame Up". His agency title and name does not constitute a privacy violation, as in December 2013 (before I was arrested), I conducted a public Google search on Rodney White and found some possible names, to which one result was correct. It displayed the suggested income and the name of "Rodney V. White". If I can find his name at that time under a Google search or by simply calling the SBI Office, then

his name and rank is not entitled to privacy protections. The U.S. District Court even allowed me to mention the name of Rodney V. White without any redaction, on Court Docket via my Pro Se filings. Withholding the SBI Case File in full would violate my right to disclosure and discovery to which should afford me a right to a New Trial without any penalties for me withdrawing my guilty plea, since it is a false guilty plea. The U.S. Attorney lying about what was not withheld in full, further shows that the U.S. Attorney will only disclose discovery material that would not be beneficial to proving my actual innocence and would not be favorable to the defense for factual claims of actual innocence.

Search Warrants are all public records, that is why by-law I am supposed to be served with a COPY of the Search Warrant when a search and seizure was conducted on my property (whether rented or owned, the landlord didn't waive my fourth amendment) as per a signed order from a Judge. That means the Search Warrant is not subject to exemptions under the FOIA law, since I can simply request a copy of my Search Warrant from the Rockingham County Superior Court in North Carolina, from the Superior Court Clerk or one of it's Deputy Clerks. Since there are no redaction on Search Warrants requested from the Superior Court, why should FOIA limit the disclosure scope to being less disclosure than simply requesting a copy from the Court Clerk?

"At all times courts must bear in mind that FOIA mandates a 'strong presumption in favor of disclosure'" Nat'l Ass'n of Home Builders v. Norton, 309 F.3d 26, 32 (D.C. Cir. 2002) (quoting Dep't of State v. Ray, 502 U.S. 164, 173 (1991)).

Congress enacted FOIA "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." Dep't of Air Force v. Rose, 425 U.S. 352, 361 (1976) (citation omitted). "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989) (citation omitted).

I am scrutinizing my own false confession that the U.S. Attorney has withheld (referring to the Audio CD) from me in response to my FOIA Request. I am scrutinizing as to why child porn would download on my Black Toshiba Laptop Computer, Satellite C655D, 11 months after my Laptop was seized which backs the statements in a threatening email from Tormail.org as to one such statement said that "we know some people in the SBI that will make sure that you are convicted", which helps prove my claim of "Frame Up."

I clearly have a right to access all of my discovery packet to scrutinize my wrongful conviction as caused by the sheer and evident collusion between my Defense Attorney and the U.S. Attorney aka the Government.

I have demonstrated a basis, in favor of disclosure, that the covered up records must be located or this shall be evidence that the U.S. Attorney has decided the SBI Case File forensic report and my false confession Audio CD was as worthless as trash, and will be used as proof of Prosecutorial Misconduct which further violated my Due Process rights under the 14th Amendment of the United States Constitution.

The U.S. Attorney has committed the worst kind of misconduct, and that is by indicting me under fraudulent or entirely questionable evidence that may have been created under inappropriate conduct or misconduct, which a sheer intent to wrongfully convict me, and going along with threats made in a threatening email from tormail.org which was reported to the very same SBI law enforcement agency. Using a confession that could have been proven false upon a cross examination and by simply asking me why I had made a false confession, which was already made known through my Pro Se filings before my conviction, and after my conviction. The U.S. Attorney has knowingly supplied false evidence in a State investigation that was made Federal after I was Federally indicted, using the loopholes of State and Federal legal differences, to allow false evidence and/or false information and fraudulently produced or obtained evidence to try to secure a wrongful conviction against a innocent man. I have demonstrated a well-grounded and strong basis in favor of disclosure under the FOIA Statute and my rights as a Defendant.

"[O]ur system of justice must be a fair and equitable one. The public interest in ensuring that no innocent person is convicted of a crime far outweighs any privacy interest in withholding the information." - Quote from ADOLFO CORREA COSS v. UNITED STATES DEPARTMENT OF JUSTICE, et al.

I have a right to prove my Actual Innocence, and the purpose of my original FOIA Request is quite clear, that the interests of Justice and correcting a false Sex Offender registration, fixing the integrity of the Federal Courts, fixing the integrity of justice, righting the wrongs done in our legal system, it all outweighs the need to conceal and prohibit disclosure to me. The U.S. Attorney should find what they covered up and release to the EOUSA paralegal, and should release to me promptly before I am forced to file a Rule 33 Motion for a New Trial, by the deadline of June 10, 2017. I will file, I will change Venue in my criminal case, and be found not guilty.

I must prove my Innocence, and for that I must get access to all records and the Audio CD that was originally requested in my FOIA Request to EOUSA.

Brian D. Hill
Signed

U.S.W.G.O.

Thank You & Sincerely,
Brian D. Hill

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